

103^D CONGRESS
1ST SESSION

H. R. 578

To provide for recovery of costs of supervision and regulation of investment advisers and their activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1993

Mr. BOUCHER (for himself, Mr. MARKEY, Mr. DINGELL, Mr. FIELDS of Texas, Mr. COOPER, Mr. WYDEN, Mr. LEHMAN, and Mr. SYNAR) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for recovery of costs of supervision and regulation of investment advisers and their activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investment Adviser
5 Regulatory Enhancement and Disclosure Act of 1993”.

1 **SEC. 2. ADDITIONAL RESOURCES FOR INVESTMENT AD-**
2 **VISER SUPERVISION.**

3 (a) AMENDMENT.—The Investment Advisers Act of
4 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting
5 after section 203 the following new section:

6 “FEES FOR REGISTRANTS AND APPLICANTS

7 “SEC. 203A. (a) IN GENERAL.—The Commission is
8 authorized, in accordance with this section, to collect fees
9 to recover the costs of registration, supervision, and regu-
10 lation of investment advisers and their activities. Such fees
11 shall be collected, and shall be available, only to the extent
12 provided in advance in appropriations Acts. No appropria-
13 tion Act may authorize fees to be collected under this sec-
14 tion during any fiscal year unless the amount appropriated
15 by such Act for such costs for such fiscal year equals or
16 exceeds the aggregate amount that may reasonably be ex-
17 pected to be collected by such fees. Such fees shall be de-
18 posited as an offsetting collection to the Commission’s ap-
19 propriation and may remain available for such purposes
20 for the succeeding fiscal year. The costs covered by such
21 fees shall be limited to the costs of Commission expenses
22 for registration, examinations, and surveys of persons reg-
23 istered or required to register under this Act.

24 “(b) TIME FOR PAYMENT.—

25 “(1) NEW REGISTRANTS.—At the time of filing
26 an application for registration under this title, the

1 applicant shall pay to the Commission the fee speci-
 2 fied in subsection (c). No part of such fee shall be
 3 refunded to the applicant. The filing of an applica-
 4 tion for registration under this title shall not be
 5 deemed to have occurred unless the application is ac-
 6 companied by the fee required under this section.

7 “(2) ONGOING REGISTRANTS.—Each invest-
 8 ment adviser whose registration is effective on the
 9 last day of its fiscal year shall pay to the Commis-
 10 sion the fee specified in subsection (c). Such pay-
 11 ment shall be made not later than 90 days after the
 12 end of its fiscal year, or at such other time as the
 13 Commission, by rule, shall determine, unless its reg-
 14 istration has been withdrawn, canceled, or revoked
 15 prior to that date. No part of such fee shall be re-
 16 funded to the investment adviser.

17 “(c) COST-BASED SCHEDULE OF FEES.—For any
 18 fiscal year for which fees are authorized to be collected
 19 by an appropriation Act, the amount of fees due from in-
 20 vestment advisers in accordance with paragraphs (1) and
 21 (2) of subsection (b) shall be determined according to the
 22 following schedule:

“Assets under management	Fee due:
Less than \$10,000,000	\$300
\$10,000,000 or more, but less than \$25,000,000	\$500
\$25,000,000 or more, but less than \$50,000,000	\$1,000
\$50,000,000 or more, but less than \$100,000,000	\$2,500
\$100,000,000 or more, but less than \$250,000,000	\$4,000
\$250,000,000 or more, but less than \$500,000,000	\$5,000

“Assets under management	Fee due:
\$500,000,000 or more	\$7,000.

1 “(d) **SUSPENSION FOR FAILURE TO PAY.**—The Com-
2 mission, by order, may suspend the registration of any in-
3 vestment adviser if it finds, after notice, that such invest-
4 ment adviser has failed to pay when due any fee required
5 by this section. The Commission shall reinstate such reg-
6 istration upon payment of the fee (and any penalty due),
7 if such suspension was based solely on the failure to pay
8 the fee.

9 “(e) **RULEMAKING.**—The Commission may adopt
10 such rules as are necessary to carry out this section.

11 “(f) **DEFINITION OF ASSETS UNDER MANAGE-**
12 **MENT.**—As used in this section, the term ‘assets under
13 management’ means the client assets with respect to which
14 an investment adviser provides continuous and regular su-
15 pervisory or management services.”.

16 (b) **EFFECTIVE DATE.**—This section shall become ef-
17 fective upon the adoption by the Commission of imple-
18 menting rules, under section 203A(f) of the Investment
19 Advisers Act of 1940, as added by subsection (a).

20 **SEC. 3. EXAMINATIONS AND SURVEYS.**

21 The Investment Advisers Act of 1940 is amended by
22 inserting after section 222 (15 U.S.C. 80b–22) the follow-
23 ing new section:

1 “EXAMINATIONS AND SURVEYS

2 “SEC. 223. (a) PERIODIC EXAMINATIONS.—The
3 Commission shall establish and periodically revise a sched-
4 ule for the regular examination of investment advisers.
5 Such schedule shall provide for more frequent examina-
6 tions of certain investment advisers based on factors that
7 the Commission determines increase the need for examina-
8 tion of those investment advisers, which shall include (at
9 a minimum) each of the following:

10 “(1) the frequency of customer complaints;

11 “(2) the risks associated with newly registered
12 investment advisers;

13 “(3) custody of funds and the authority to exer-
14 cise investment discretion;

15 “(4) the existence of deficiencies detected dur-
16 ing an examination under this title that may con-
17 tinue to present high risks to clients; and

18 “(5) the receipt of commissions for the sale of
19 investments recommended to clients.

20 “(b) SURVEYS OF UNREGISTERED PERSONS.—The
21 Commission shall, within 3 years after the date of enact-
22 ment of this section and periodically thereafter, provide
23 for the conduct of a survey to determine the extent of,
24 and reasons for, the failure of persons to register as re-
25 quired by this Act. The Commission shall, on the basis

1 of such survey results, establish objectives for the reduc-
2 tion or elimination of such failures and shall include in
3 annual reports to Congress (under section 23(b) of the
4 Securities Exchange Act of 1934) submitted after comple-
5 tion of the first survey, a statement of such objectives,
6 an evaluation of the success in attaining those objectives
7 during the preceding year, and such recommendations as
8 the Commission considers appropriate to assist in the at-
9 tainment of those objectives. If the survey identifies any
10 pattern of noncompliance with the registration require-
11 ments of the title and the rules thereunder, the Commis-
12 sion's objectives shall include such rulemaking proceedings
13 as may be required to correct such noncompliance.

14 “(c) PROVISIONS NOT LIMITATION.—The provisions
15 of this section shall not be construed to limit the authority
16 of the Commission to prescribe rules under this Act or
17 to conduct an examination or investigation at any time
18 or to institute proceedings under this title or any other
19 title.”.

20 **SEC. 4. DESIGNATION OF SELF-REGULATORY ORGANIZA-**
21 **TIONS.**

22 The Investment Advisers Act of 1940 (15 U.S.C.
23 80b–1 et seq.) is amended by inserting after section 223
24 (as added by section 3 of this Act) the following new sec-
25 tion:

1 “DESIGNATION OF SELF-REGULATORY ORGANIZATIONS

2 “SEC. 224. (a) DESIGNATION TO CONDUCT EXAMI-

3 NATIONS.—The Commission, by rule, consistent with the

4 public interest, the protection of investors, and the pur-

5 poses of this title, may designate one or more self-regu-

6 latory organizations registered with the Commission under

7 sections 6 or 15A of the Securities Exchange Act of 1934,

8 to conduct periodic examinations of its members and affili-

9 ates of members that are registered or required to register

10 under this title to determine compliance with applicable

11 provisions of this title and the rules and regulations there-

12 under. Such rules shall specify the minimum scope and

13 frequency for such examinations and shall, to the extent

14 consistent with the protection of investors, be designed to

15 avoid unnecessary regulatory duplication or undue regu-

16 latory burdens. Such self-regulatory organization may dis-

17 cipline such members and affiliates of members for viola-

18 tions of the applicable provisions of this title and the rules

19 and regulations thereunder pursuant to the standards and

20 procedures set forth in sections 6, 15A, and 19 of the Se-

21 curities Exchange Act of 1934. The penalties imposed by

22 a self-regulatory organization for violations of this title

23 shall not exceed those contained in subsections (e), (f),

24 and (i) of section 203.

1 “(b) LIMITATION.—The Commission shall not exer-
2 cise the designation authority contained in subsection (a)
3 for members or affiliates of members if the primary busi-
4 ness of the member or its affiliates is investment advisory
5 activities. The Commission, by rule, may establish criteria
6 for defining the term ‘primary business’.

7 “(c) AUTHORITY TO IMPOSE FEES.—

8 “(1) IN GENERAL.—Any self-regulatory organi-
9 zation designated by the Commission to perform the
10 examinations specified in subsection (a) shall have
11 the authority to collect fees in accordance with this
12 subsection.

13 “(2) LIMITATION.—The total fee paid by a reg-
14 istered investment adviser under this subsection
15 shall not exceed an amount determined in accord-
16 ance with rules prescribed by the Commission. Such
17 rules shall require that the fees collected by a self-
18 regulatory organization under this subsection—

19 “(A) cover only the costs of the self-regu-
20 latory organization’s expenses for examinations
21 conducted pursuant to subsection (a);

22 “(B) as to any investment adviser, bear a
23 reasonable relationship to the costs of conduct-
24 ing an examination of that adviser pursuant to
25 subsection (a); and

1 “(C) not exceed such portion of the fee au-
2 thorized under section 203A as the Commission
3 determines is allocable to the Commission’s ex-
4 penses for conducting such an examination.

5 “(3) REDUCTION OF SECTION 203A FEES.—The
6 amount of any fee that a registered investment ad-
7 viser is required to pay under section 203A with re-
8 spect to any fiscal year shall be reduced by the
9 amount paid to a self-regulatory organization in ac-
10 cordance with this subsection with respect to such
11 fiscal year.

12 “(d) EFFECTIVE DATE OF RULE.—A rule prescribed
13 by the Commission under this section shall not be effective
14 until 90 days after the date on which the Commission sub-
15 mits to each House of Congress a report—

16 “(1) containing the text of the proposed rule
17 and the reasons therefor;

18 “(2) describing the procedures to be used to co-
19 ordinate the collection of fees by the Commission
20 under section 203A and by a self-regulatory organi-
21 zation under the rule; and

22 “(3) containing such other information as may
23 be necessary to describe the implementation and en-
24 forcement of the rule.

1 “(e) DEFINITION.—For purposes of this section, the
2 term ‘affiliate’ shall mean any person directly or indirectly
3 controlling, controlled by, or under common control with
4 a member.”.

5 **SEC. 5. SUITABILITY AND OTHER ADVISER OBLIGATIONS.**

6 (a) AMENDMENT.—Section 206 of the Investment
7 Advisers Act of 1940 (15 U.S.C. 80b–6) is amended to
8 read as follows:

9 “PROHIBITED TRANSACTIONS BY INVESTMENT ADVISERS

10 “SEC. 206. (a) PROHIBITED CONDUCT.—It shall be
11 unlawful for any investment adviser or any person associ-
12 ated with an investment adviser, by use of the mails or
13 any means or instrumentality of interstate commerce, di-
14 rectly or indirectly—

15 “(1) to employ any device, scheme, or artifice to
16 defraud any client or prospective client;

17 “(2) to engage in any transaction, practice, or
18 course of business which operates as a fraud or de-
19 ceit upon any client or prospective client;

20 “(3) acting as principal for his own account,
21 knowingly to sell any security to or purchase any se-
22 curity from a client, or acting as broker for a person
23 other than such client, knowingly to effect any sale
24 or purchase of any security for the account of such
25 client, without disclosing to such client in writing be-
26 fore the completion of such transaction the capacity

1 in which he is acting and obtaining the consent of
2 the client to such transaction;

3 “(4) to engage in any act, practice, or course of
4 business which is fraudulent, deceptive, or manipula-
5 tive;

6 “(5) to provide investment advice to any client,
7 other than in connection with impersonal advisory
8 services, unless the adviser—

9 “(A) prior to providing any investment ad-
10 vice, and as appropriate thereafter, makes a
11 reasonable inquiry into the client’s financial sit-
12 uation, investment experience, and investment
13 objectives;

14 “(B) reasonably determines that the in-
15 vestment advice is suitable for the client; and

16 “(C) maintains reasonable records, in ac-
17 cordance with such rules as the Commission
18 shall prescribe, of the information obtained
19 from the inquiries the adviser made in comply-
20 ing with this paragraph; or

21 “(6) to guarantee a client that a specific result
22 will be achieved as a result of the investment advi-
23 sory services.

24 “(b) EXEMPTIONS AND SPECIAL RULES.—

1 “(1) EXEMPTION.—The prohibitions of sub-
2 section (a)(3) shall not apply to any transaction with
3 a customer of a broker or dealer if such broker or
4 dealer is not acting as an investment adviser in rela-
5 tion to such transaction.

6 “(2) AUTHORITY TO DEFINE AND PRE-
7 SCRIBE.—The Commission shall, for the purposes of
8 subsection (a)(4), by rules define, and prescribe
9 means reasonably designed to prevent, such acts,
10 practices, and courses of business as are fraudulent,
11 deceptive, or manipulative.

12 “(3) DEFINITION OF IMPERSONAL ADVISORY
13 SERVICES.—As used in subsection (a)(5), the term
14 ‘impersonal advisory services’ means any investment
15 advisory services provided—

16 “(A) by means of written material or oral
17 statements which do not purport to meet the
18 objectives or needs of specific individuals or ac-
19 counts;

20 “(B) through the issuance of statistical in-
21 formation containing no expression of opinion
22 as to the investment merits of a particular secu-
23 rity; or

24 “(C) by any combination of the foregoing
25 services.”.

1 (b) RULEMAKING REQUIRED.—The Commission shall
 2 prescribe rules for purposes of paragraph (5)(C) of section
 3 206(a) of the Investment Advisers Act of 1940 (as added
 4 by subsection (a) of this section) within one year after the
 5 date of enactment of this Act.

6 **SEC. 6. ADDITIONAL DISCLOSURE OBLIGATIONS OF IN-**
 7 **VESTMENT ADVISERS.**

8 (a) ADDITIONAL OBLIGATIONS.—Section 204 of the
 9 Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is
 10 amended—

11 (1) by striking the heading of such section and
 12 inserting the following:

13 “PERIODIC REPORTS AND OTHER DISCLOSURE
 14 REQUIREMENTS”;

15 (2) by inserting “(a) PERIODIC AND OTHER
 16 REPORTS.—” after “SEC. 204.”; and

17 (3) by adding at the end the following new sub-
 18 sections:

19 “(b) BROCHURE REQUIRED.—

20 “(1) IN GENERAL.—Each person registered
 21 under section 203 of this title shall disseminate to
 22 each client or prospective client a document disclos-
 23 ing material facts concerning matters listed in para-
 24 graphs (2) and (3) and such other matters as the
 25 Commission shall prescribe. In order to provide for
 26 timely and effective disclosure of such facts and

1 matters to clients, the Commission shall by rule pre-
2 scribe the format of the document and the timing of
3 its dissemination.

4 “(2) CONTENTS OF BROCHURE.—The document
5 required by paragraph (1) shall include information
6 concerning—

7 “(A) the education and business back-
8 ground of such person and of any associated
9 person providing significant investment advisory
10 services to the client,

11 “(B) compensation arrangements between
12 the client and the investment adviser,

13 “(C) the nature of services offered,

14 “(D) business practices,

15 “(E) methods for obtaining information on
16 the disciplinary history and registration of the
17 investment adviser and persons associated with
18 the investment adviser, and

19 “(F) conflicts of interest which could rea-
20 sonably be expected to impair the rendering of
21 disinterested advice.

22 “(3) PROMINENT DISCLOSURES.—Such docu-
23 ment shall also prominently disclose—

24 “(A) that—

1 “(i) the registered person receives or
2 may receive, directly or indirectly, sales
3 commissions or other fees in connection
4 with a purchase or sale effected on behalf
5 of a client; or

6 “(ii) the registered person will not re-
7 ceive, directly or indirectly, any sales com-
8 mission or other fees in connection with
9 such purchase or sale, but the client may
10 be charged a sales commission or other fee
11 by another person in connection with such
12 purchase or sale; and

13 “(B) that remedies may be available to the
14 client with respect to disputes arising out of the
15 advisory relationship.

16 “(4) DEFINITION.—The Commission shall de-
17 fine ‘associated person providing significant invest-
18 ment advisory services to the client’ by rule for pur-
19 poses of this subsection.

20 “(c) TRANSACTION REPORTS.—

21 “(1) INITIAL DISCLOSURE.—Before a purchase
22 or sale is effected on behalf of any client, each reg-
23 istered investment adviser shall, in accordance with
24 rules prescribed by the Commission, disclose to the
25 client the total amount of commissions, fees, or

1 other charges that may reasonably be expected to be
2 charged in connection with the transaction (or, in
3 the case of payments from third parties, that a pay-
4 ment will be received) and that the adviser or a re-
5 lated person will receive a portion of the commission,
6 fee, charge, or payment. Such initial disclosure shall
7 be in writing if the purchase or sale was rec-
8 ommended in writing.

9 “(2) CONFIRMATION.—After a purchase or sale
10 is effected, each registered investment adviser shall
11 transmit to each client a written statement that dis-
12 closes the amount of commissions, fees, or other
13 charges charged in connection with the transaction
14 (or, in the case of payments from third parties, that
15 a payment has been or will be received). Such writ-
16 ten statement shall be in such form and contain
17 such information, and be provided in accordance
18 with such rules, as the Commission shall prescribe.
19 Such rules shall, to the extent consistent with the
20 protection of investors, permit delivery of a con-
21 firmation statement of a broker or a dealer that in-
22 cludes information that meets the requirements of
23 this subsection (and the rules adopted thereunder)
24 in order to satisfy such requirements.

1 “(3) WAIVER.—The Commission may, by rule,
2 permit an investment adviser to omit disclosure re-
3 quired by this subsection with the knowing written
4 consent of the client.

5 “(4) EXCEPTIONS.—This subsection shall not
6 apply—

7 “(A) with respect to any purchase or sale
8 for which the registered person, and any person
9 associated or under common control with the
10 registered person, will not receive any portion of
11 the amount charged or deducted in connection
12 with the purchase or sale, and will not receive
13 any payment from a third party required to be
14 disclosed under paragraph (1);

15 “(B) with respect to accounts for which
16 the person is authorized to exercise investment
17 discretion; or

18 “(C) with respect to any account for which
19 the person is not acting as an investment ad-
20 viser.

21 “(5) SPECIAL RULE.—The provisions of this
22 subsection shall also apply to persons associated
23 with an investment adviser effecting transactions for
24 advisory clients through a broker or dealer with
25 which the person is associated.

1 “(d) PERIODIC REPORTS.—

2 “(1) IN GENERAL.—Each registered investment
3 adviser shall periodically provide to each client a
4 written statement of—

5 “(A) all commissions, fees, or other
6 charges paid by the client during the period for
7 services provided by the registered person and
8 any person associated or under common control
9 with the registered person;

10 “(B) all compensation directly or indirectly
11 received during the period by the registered per-
12 son, or any person associated or under common
13 control with the registered person, from any
14 third party with respect to any recommended
15 transaction;

16 “(C) in the case of a client account for
17 which the adviser provides investment super-
18 visory services, all securities positions held in
19 the account at the beginning and at the end of
20 the period; and

21 “(D) such other matters as the Commis-
22 sion shall prescribe.

23 “(2) COMMISSION RULES.—The Commission
24 shall prescribe by rule the format of the statement
25 and timing of its delivery. Such rule shall require

1 that the format and timing of delivery be designed
2 to present the required information in a manner that
3 readily permits clients to compare the costs charged
4 by the investment adviser with the costs charged by
5 other advisers. In adopting such rule, the Commis-
6 sion shall require an investment adviser whose cli-
7 ents purchase or sell investment products through
8 persons other than such adviser, or persons associ-
9 ated or under common control with such adviser, to
10 disclose to its clients that such information concern-
11 ing costs charged does not include commissions or
12 other fees paid in connection with such purchases or
13 sales. Such rule shall, to the extent consistent with
14 the protection of investors, permit delivery of a re-
15 port of a broker or dealer that includes information
16 that meets the requirements of this subsection (and
17 the rules adopted thereunder) in order to satisfy
18 such requirements.

19 “(3) WAIVER.—The Commission may, by rule,
20 permit an investment adviser to provide the state-
21 ment required by paragraph (1) no more frequently
22 than annually if the client knowingly waives, in writ-
23 ing, the right to obtain such statement more fre-
24 quently than annually.

1 “(4) EXCEPTION.—This subsection shall not
2 apply with respect to any account for which the per-
3 son is not acting as an investment adviser.

4 “(e) FACILITIES FOR FILING RECORDS AND RE-
5 PORTS.—The Commission, by rule, may require any in-
6 vestment adviser—

7 “(1) to file with the Commission any fee, appli-
8 cation, report, or notice required by this title or by
9 the rules issued under this title through any person
10 designated by the Commission for that purpose; and

11 “(2) to pay the reasonable costs associated with
12 such filing.”.

13 (b) RULEMAKING REQUIRED.—The Commission shall
14 prescribe rules for purposes of subsections (b), (c), and
15 (d) of section 204 of the Investment Advisers Act of 1940
16 (as added by subsection (a) of this section) within one year
17 after the date of enactment of this Act.

18 **SEC. 7. BOND REQUIREMENT.**

19 Section 208 of the Investment Advisers Act of 1940
20 (15 U.S.C. 80b–8) is amended by adding at the end the
21 following:

22 “(e) BOND REQUIREMENT.—

23 “(1) IN GENERAL.—The Commission shall, by
24 rules for the protection of investors, require that any

1 investment adviser registered under section 203
2 who—

3 “(A) is authorized to exercise investment
4 discretion, as defined in section 3(a)(35) of the
5 Securities Exchange Act of 1934, with respect
6 to an account,

7 “(B) has access to the securities or funds
8 of a client, or

9 “(C) is an investment adviser of an invest-
10 ment company, as defined in section 2(a)(20) of
11 the Investment Company Act of 1940,

12 shall obtain a bond from a reputable fidelity insur-
13 ance company against larceny and embezzlement in
14 such reasonable amounts and covering such officers,
15 partners, directors, and employees of the investment
16 adviser as the Commission may prescribe.

17 “(2) CONSIDERATIONS IN RULEMAKING.—In
18 implementing paragraph (1), the Commission shall
19 consider—

20 “(A) the degree of risk to client assets that
21 is involved;

22 “(B) the cost and availability of fidelity
23 bonds;

24 “(C) existing fidelity bonding require-
25 ments; and

1 “(D) any alternative means to protect cli-
2 ent assets.

3 “(3) EXEMPTION AUTHORITY.—The Commis-
4 sion by rule may exempt any person or class of per-
5 sons, under such terms and conditions and for such
6 periods as the Commission shall provide in such
7 rule, from the requirements of this subsection and
8 the rules thereunder.

9 **SEC. 8. DISQUALIFYING CONDUCT.**

10 (a) AMENDMENT.—Section 203(e) of the Investment
11 Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

12 (1) by redesignating paragraphs (3) through
13 (7) as paragraphs (4) through (8); and

14 (2) by inserting after paragraph (2) the follow-
15 ing new paragraph:

16 “(3) has been convicted within ten years pre-
17 ceding the filing of any application for registration
18 or at any time thereafter of any crime that is pun-
19 ishable by imprisonment for one or more years and
20 that is not described in paragraph (2) of this sub-
21 section or of a substantially equivalent crime by a
22 foreign court of competent jurisdiction.”.

23 (b) CONFORMING AMENDMENTS.—Section 203 of
24 such Act is further amended—

1 (1) in subsection (e)(6) (as redesignated by
 2 subsection (a) of this section, by striking “this para-
 3 graph (5)” and inserting “this paragraph (6)”;

4 (2) in subsection (f)—

5 (A) by striking “paragraph (1), (4), (5), or
 6 (7)” and inserting “paragraph (1), (5), (6), or
 7 (8)”; and

8 (B) by striking “paragraph (3)” and in-
 9 serting “paragraph (4)”; and

10 (3) in subsection (i)(1)(D), by striking “section
 11 203(e)(5) of this title” and inserting “subsection
 12 (e)(6) of this section”.

13 **SEC. 9. CONFIDENTIALITY.**

14 Section 208 of the Investment Advisers Act of 1940
 15 (15 U.S.C. 80b–8), as amended by section 7, is further
 16 amended by adding at the end the following new sub-
 17 section:

18 “(f) DISCLOSURE OF CLIENT INFORMATION PROHIB-
 19 ITED.—

20 “(1) ADVISER DISCLOSURE.—It shall be unlaw-
 21 ful for any investment adviser to disclose any per-
 22 sonally identifiable financial information with respect
 23 to any client unless required by law to do so, or un-
 24 less—

1 “(A) the client has been adequately in-
2 formed of the proposed information disclosure,
3 in accordance with rules prescribed by the Com-
4 mission, and (i) has been afforded the oppor-
5 tunity, in accordance with such rules, to object
6 to the disclosure, and (ii) has not objected or
7 has affirmatively consented;

8 “(B) the information disclosed is necessary
9 and appropriate in order to establish an advi-
10 sory or brokerage account or to effect or at-
11 tempt to effect a transaction for the client;

12 “(C) the information (i) is requested by
13 representatives of the Commission, a State
14 agency whose primary assignment is the regula-
15 tion of the securities business, or a self-regu-
16 latory organization, or (ii) is requested by sub-
17 poena; or

18 “(D) the information is requested by the
19 client’s auditors or accountants.

20 “(2) SECONDARY DISCLOSURE.—It is unlawful
21 for any person to whom information is disclosed for
22 the purpose described in paragraph (1)(B) to use
23 such information for any purpose other than the ef-
24 fectuation of the client’s transaction.”.



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